

WILLIS FLOYD WILEY §  
v. § CIVIL ACTION NO. 6:09cv454  
DIRECTOR, TDCJ-CID §

The Petitioner Willis Wiley, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Court has conducted a careful *de novo* review of the Magistrate Judge's Report and Wiley's response thereto. While the Magistrate Judge's discussion of exhaustion and the possible successive nature of Wiley's petition is accurate, the Fifth Circuit has held that plaintiffs have an absolute right to a voluntary dismissal. Harvey Specialty and Supply Inc. v. Anson Flowline Equipment Inc., 434 F.3d 320, 324 (5th Cir. 2005). Wiley's motion to dismiss his petition is meritorious, and it is accordingly

ORDERED that the Petitioner's motion for voluntary dismissal of his petition is GRANTED and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court insofar as it recommends that the petition be dismissed without prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 7th day of December, 2009.**

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE